

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

DARIUS QUINARD CARLISLE,

Petitioner,

v.

Case No. 2:08-cv-00010

UNITED STATES OF AMERICA,

Respondent.

PROPOSED FINDINGS AND RECOMMENDATION

On January 4, 2008, Petitioner filed a Petition for Writ of Habeas Corpus Ad Documentary Evidence under 28 U.S.C. § 2247 (docket # 1). Petitioner is presently incarcerated at FCI McKean, Bradford, PA, located in the Western District of Pennsylvania. This matter is assigned to the Honorable Joseph R. Goodwin, Chief United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On December 13, 2004, Petitioner entered guilty pleas to interference with commerce by threats or violence, and use of a firearm during a crime of violence, in violation of 18 U.S.C. §§ 1951 and 924(c)(1)(A). United States v. Carlisle, Case No. 2:04-cr-00096-1 (S.D. W. Va.), docket ## 127-130. On April 6, 2005,

Petitioner was sentenced to a total of 216 months of imprisonment, to be followed by a five-year term of supervised release. Petitioner was also ordered to pay restitution in the amount of \$67,585.18, and a \$200 special assessment. (Judgment in a Criminal Case, # 144, Faber, J.) The offenses arose out of the armed robbery and shooting of a pizza deliveryman. Petitioner did not take a direct appeal.

The petition states as follows: "Mr. Carlisle is submitting this petition in good faith which he is seeking the UNITED STATES OF AMERICA to produce documentary that will prove factually the firearm that was used for sentencing purposes." (Pet., at 1.)

ANALYSIS

The instant petition appears to be a request for discovery of evidence supporting Petitioner's guilty pleas and sentence, which is not obtainable as pled by Petitioner. Title 28, United States Code, Section 2247 reads as follows:

On application for a writ of habeas corpus documentary evidence, transcripts of proceedings upon arraignment, plea and sentence and a transcript of the oral testimony introduced on any previous similar application by or in behalf of the same petitioner, shall be admissible in evidence.

This statute clearly relates to the admissibility in evidence of documents from a prior criminal case involving an habeas corpus petitioner.

On March 3, 2008, Petitioner filed a "Motion to Vacate Conviction and Sentence under the 'Savings Clause' of 28 U.S.C. §

2255, ¶ 5," (docket # 152 in his criminal case, and No. 2:08-cv-00142). Petitioner may be attempting to obtain evidence to use in support of his § 2255 motion. Petitioner's guilty pleas constitute an admission of the essential elements of the offenses, and he is not entitled to discovery of tangible evidence concerning the same.

Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DENY** Petitioner's section 2247 petition and dismiss this matter from the court's docket.

Petitioner is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rule 45(c) of the Federal Rules of Criminal Procedure, Petitioner shall have ten days (filing of objections), and then three days (service/mailing), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S.

140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Chief Judge Goodwin and this Magistrate Judge.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Petitioner.

March 17, 2008

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge